

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**TROY MCRAE**

**Plaintiff,**

**9:14-cv-783  
(GLS/TWD)**

**v.**

**C.O. GENTILE, *et al.*,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

TROY MCRAE  
Plaintiff *Pro Se*  
06-A-3212  
Southport Correctional Facility  
P.O. Box 2000  
Pine City, New York 14871

**FOR THE DEFENDANTS:**

HON. ERIC T. SCHNEIDERMAN  
New York State Attorney General  
Litigation Bureau  
The Capitol  
Albany, New York 12224

CATHY Y SHEEHAN  
Assistant Attorney General

**Gary L. Sharpe  
District Judge**

## **ORDER**

The above-captioned matter comes to this court following a Report and Recommendation by Magistrate Judge Therese Wiley Dancks, duly filed on October 20, 2015. (Dkt. No. 53.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Report and Recommendation for clear error, it is hereby

**ORDERED** that the Report and Recommendation (Dkt. No. 53) is **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 43) for failure to state a claim is **GRANTED** with leave to amend as to Defendant CO McConnell and Defendant Superintendent Graham in his personal capacity; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 43) for failure to state a claim is **GRANTED** without leave to amend as to Defendant Superintendent Graham in his official capacity; and it is further

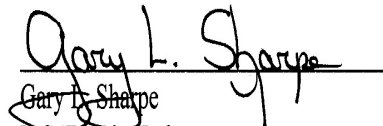
**ORDERED** that Defendants' motion to dismiss (Dkt. No. 43) for

failure to state a claim is DENIED as to Defendant CO Peters and Defendant CO Gifford; and it is further

**ORDERED** that the clerk of the court serve a copy of this order upon the parties in accordance with this court's local rules.

**IT IS SO ORDERED.**

November 18, 2015  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge